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Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE ENROLLED ACT No. 273

AN ACT to amend the Indiana Code concerning taxation and environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]:

Chapter 23. Voluntary Remediation Tax Credit

Sec. 1. As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

Sec. 2. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

Sec. 3. As used in this chapter, "qualified investment" means costs that:

- (1) are incurred to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;
- (2) may not be recovered by a taxpayer from another person after the taxpayer has made a good faith effort to recover the costs; and
- (3) are approved by the department of environmental management and the Indiana development finance authority under section 12 of this chapter.



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Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's total tax liability incurred under:

- (1) IC 6-2.1 (the gross income tax);
- (2) IC 6-2.5 (the state gross retail and use tax);
- (3) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (4) IC 6-3-8 (the supplemental net income tax);
- (5) IC 6-5-10 (the bank tax);
- (6) IC 6-5-11 (the savings and loan association tax);
- (7) IC 6-5.5 (the financial institutions tax); and
- (8) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

- (1) The taxpayer does the following:
 - (A) Makes a qualified investment in that taxable year.
 - (B) Makes a good faith attempt to recover the costs of the environmental damages from the liable parties.
 - (C) Submits a plan to the legislative body of the political subdivision in which the property is located to redevelop the property in a manner in which the legislative body determines to be in the best interest of the community.
- (2) The legislative body of the political subdivision in which the property is located adopts a resolution under section 7 of this chapter approving the credit.
- (3) The department determines under section 15 of this chapter that the taxpayer's return claiming the credit is filed with the department before the maximum amount of credits allowed under this chapter is met.

(b) The redevelopment plan must include a statement of public benefits, which must include the following:

- (1) A description of the proposed redevelopment.
- (2) An estimate of the number of individuals who will be employed or housed in the new development and an estimate of the annual salaries of the employees.

(c) In determining whether the redevelopment is in the best interest of the community, the legislative body must consider, among other things, whether the proposed development promotes:

- (1) the development of low to moderate income housing;



- (2) the development of green space;
- (3) the development of high technology businesses; or
- (4) the creation or retention of high paying jobs.

Sec. 6. The amount of the credit allowed under this chapter is equal to the lesser of:

- (1) one hundred thousand dollars (\$100,000); or
- (2) ten percent (10%) multiplied by the qualified investment made by the taxpayer during the taxable year.

Sec. 7. After the submission of a statement of benefits under section 5 of this chapter, the legislative body may adopt a resolution to approve a tax credit.

Sec. 8. Before adopting a resolution under section 7 of this chapter, a legislative body must publish notice of the proposed resolution and the public hearing required under section 9 of this chapter in accordance with IC 5-3-1. The published notice must contain the substance of the proposed resolution.

Sec. 9. Before adopting a resolution under section 7 of this chapter, the legislative body must review the statement of benefits required under section 5 of this chapter and conduct a public hearing on the proposed tax credit.

Sec. 10. (a) The legislative body shall determine whether to approve a tax credit allowed under this chapter.

(b) A legislative body may approve a credit only if the following findings are made in the affirmative:

- (1) The taxpayer:
 - (A) has never had an ownership interest in an entity that contributed; and
 - (B) has not contributed;
 to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority.
- (2) The proposed improvement or property will be located in a zone (as defined in IC 6-1.1-42-4).
- (3) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.
- (4) The estimate of the number of individuals who will be housed or employed or whose employment will be retained can be reasonably expected to result from the proposed remediation and redevelopment.
- (5) The estimate of the annual salaries of those individuals



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who will be employed or whose employment will be retained can be reasonably expected to result from the proposed remediation and redevelopment.

(6) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed remediation and redevelopment.

(7) The totality of benefits is sufficient to justify the credit.

Sec. 11. (a) If the amount determined under section 6 of this chapter in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over for not more than the immediately following five (5) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or a refund of any unused credit.

Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management and the Indiana development finance authority to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) The department of environmental management and the Indiana development finance authority shall certify costs incurred in a voluntary remediation as a qualified investment to the extent that the costs:

(1) result from work performed in Indiana to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;

(2) may not be recovered by the taxpayer from another person after the taxpayer has made a good faith effort to recover the costs; and

(3) result in taxable income to any other Indiana taxpayer; as determined under the standards adopted by the department of environmental management.

(d) Upon completion of a voluntary remediation that has been certified as a qualified investment under subsection (c), the taxpayer shall notify the department of environmental management and request certification of the completion of the voluntary remediation.

Sec. 13. (a) To receive the credit provided by this chapter, a

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taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

(b) The taxpayer shall submit the following to the department of state revenue:

- (1) The certification of the qualified investment by the department of environmental management and the Indiana development finance authority and the certification of the completion of the voluntary remediation by the department of environmental management.
- (2) Proof of payment of the certified qualified investment.
- (3) Proof of the legislative body's approval of the credit.
- (4) Information that the department determines is necessary for the calculation of the credit provided by this chapter.

Sec. 14. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, a partner, or a member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified expenditure.

Sec. 15. (a) The amount of tax credits allowed under this chapter may not exceed one million dollars (\$1,000,000) in a state fiscal year unless the Indiana development finance authority determines under subsection (e) that money is available for additional tax credits in a particular state fiscal year. However, if the maximum amount of tax credits allowed under this subsection exceeds the amount available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5), the maximum amount of tax credits allowed under this subsection is reduced to the amount available.

(b) The department shall record the time of filing of each return claiming a credit under section 13 of this chapter and shall, except as provided in subsection (c), grant the credit to the taxpayer, if the taxpayer otherwise qualifies for a tax credit under this chapter, in

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the chronological order in which the return is filed in the state fiscal year.

(c) If the total credits approved under this section equal the maximum amount allowable in a state fiscal year, a return claiming the credit filed later in that same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file the information required by section 13 of this chapter, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to the next eligible applicant or applicants until the total amount has been allowed. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

(d) The department of state revenue shall report the total credits granted under this chapter for each state fiscal year to the Indiana development finance authority. The Indiana development finance authority shall transfer to the state general fund an amount equal to the total credits granted from the subaccount of the environmental remediation revolving loan fund (IC 13-19-5).

(e) At the end of each state fiscal year, the Indiana development finance authority may determine whether money is available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5) to provide tax credits in excess of the amount set forth in subsection (a) in the subsequent state fiscal year.

(f) Before December 31 of each year, the Indiana development finance authority may assess the demand for tax credits under this chapter and determine whether the need for other brownfield activities is greater than the need for tax credits. If the Indiana development finance authority determines that the need for other brownfield activities is greater than the need for tax credits, the authority may set aside up to three-fourths (3/4) of the amount of allowable tax credits for the subsequent state fiscal year and use it for other brownfield projects.

(g) Except as provided in subsection (h), the Indiana development finance authority may use money set aside under subsection (f) for any permissible purpose.

(h) Money specifically appropriated for tax credits may not be set aside for another use.

Sec. 16. A tax credit may not be allowed under this chapter for a taxable year that begins after December 31, 2003. However, this section does not affect the ability of a taxpayer to carry forward the excess of a tax credit claimed for taxable years 2002 or 2003



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under section 11 of this chapter.

Sec. 17. The Indiana development finance authority, after consulting with the department of environmental management and the budget agency and without complying with IC 4-22-2, may adopt guidelines to govern the administration of this chapter.

SECTION 2. IC 13-19-5-15, AS ADDED BY P.L.119-1999, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) The authority may deposit appropriations or other money received under this chapter after June 30, 1999, into ~~a subaccount~~ **an account** of the fund. The authority shall use money deposited in the ~~subaccount~~ **account** to award forgivable loans to political subdivisions for remediation or other brownfield redevelopment activities. The authority shall, in the manner provided by section 11 of this chapter, adopt guidelines to establish a political subdivision's eligibility for a forgivable loan. The guidelines must provide priority for projects that:

- (1) involve abandoned gas stations or underground storage tank issues; or
- (2) are located within one-half (0.5) mile of any of the following:
 - (A) A child care center (as defined by IC 12-7-2-28.4).
 - (B) A child care home (as defined by IC 12-7-2-28.6).
 - (C) A child caring institution (as defined by IC 12-7-2-29).
 - (D) A school age child care program (as defined by IC 12-17-12-5).
 - (E) An elementary or a secondary school attended by students in kindergarten or grades 1 through 12.

(b) Not more than twenty percent (20%) of the total amount of loans provided for a project under this chapter may be in the form of a forgivable loan.

(c) The financial assistance agreement for a project to be financed with a forgivable loan must specify economic development or redevelopment goals for the project that must be achieved before the political subdivision will be released from its obligation to repay the forgivable loan.

SECTION 3. [EFFECTIVE JANUARY 1, 2002] IC 6-3.1-23, as added by this act, applies to taxable years beginning after December 31, 2001.

SECTION 4. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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